IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 5.2.2007

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Writ Petition Nos.8913 and 8914 of 1999

Prashanth Textiles Limited,
represented by its Managing Director
V.Ravichandran,
Rengaswamy Nagar,
Vadapatti Post,
Coimbatore-7 ... Petitioner in both W.Ps.

-Vs.-

The Executive Officer,
Veerakeralam Town Panchayat,
Coimbatore 641 007. ... Respondent in both W.Ps.

Both the Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent pertaining to special notices issued in Nos.127451 and 127452 respectively dated nil and the common order passed in Rc.No.436/98 dated 17.3.1999 and quash the same.

For petitioner in both W.Ps. : Mr.M.Venkatachalapathy, Senior Counsel for Mr.D.Balaraman.

For respondent in both W.Ps. : Mr.G.Sankaran, Additional Government Pleader.

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COMMON ORDER

Both the writ petitions have been filed challenging the special notice undated and consequent common proceedings Rc.No.436/98 dated 17.3.1999 revising the property tax.

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2. The case of the petitioner in both the writ petition is that he is the owner of the property in Veerakeralam Town Panchayat. Notices under Rule 9/10 of Schedule IV to the Tamil Nadu District Municipalities Act, 1920 were issued by the respondent Executive Officer by way of a Special Notice in respect of property tax in proceedings Nos.127451 and 127452. Such notices did not contain any reason for the revision of tax. Therefore, on 12.3.1999, objections were submitted by the petitioner on several aspects objecting to the revision of tax, which culminated in passing of the common impugned proceedings/order Rc.No.436/98 dated 17.3.1999. It is the special notice and the proceedings dated 17.3.1999, which are under challenge before this Court. Though an appeal has been preferred to the President on 29.4.1999, the matter remains as such. The present writ petitions have been filed primarily on the ground that the Special Notice does not contain any reason whatsoever for revision of the property tax in question and the impugned proceedings/order has been passed contrary to the provisions of the Tamil Nadu District Municipalities Act and without any basis and bereft of reasons. It is contended that the authorities cannot revise the property tax merely on the basis of the guidelines issued by the Government but there should be some objectivity and reasons for doing so. The proceedings/order dated 17.3.1999 is a non-speaking order and without application of mind.

3. Learned counsel for the petitioner submitted that the notice did not contain any reasons and the petitioner was not able to make an effective representation to the authorities concerned and therefore, prejudice. Counsel for the petitioner submitted that the respondent municipality did not consider the fair or standard rent which would be normally be payable for the building under Rent Control Act in force and it is one of the parameters to determine the value of the property. In the instant case, the enhancement of tax has been made without considering or determining the fair or standard rent for the property. The authority should first arrive at the correct annual value of the building before proceeding further in the matter. On the contrary, the authority has merely stated that he had taken into consideration the guideline value fixed by the Government. The proceedings/order dated 17.3.1999 refers to various Government Orders, on the basis of which property tax has been revised, without referring to such Government Orders in the special notice. In any event, no materials was referred to or reasons given in the notice. In the proceedings dated 17.3.1999 passed pursuant to the notice issued under Rule 9/10 of Schedule IV to the Tamil Nadu District Municipalities Act, the authority has rejected the detailed representation made by the petitioner cursorily in one line. It is also the grievance of the petitioner that no personal hearing was given and that principles of natural justice have been violated. Therefore, it was contended that the assessment proceedings/order dated 17.3.1999 is in violation of principles of natural justice and therefore, has to be set aside.

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4. Sections 82 and 83 of the Tamil Nadu District Municipalities Act provides the manner in which the basic property tax and additional basic property tax should be determined and it reads as follows:-

> "82. Minimum and maximum basic property tax, additional basic property tax, etc.- The State Government shall prescribe the minimum and maximum rates of-
>
> (a) basic property tax for the building or land having regard to
>
> (i) existing property tax;
> (ii) the value of the building and land; and
> (iii) the use of the building;
>
> (b) additional basic property tax for every building with reference to its location,
>
> (bb) additional base property tax for every building with reference to its type of construction;
>
> (c) the concession with regard to age of the building."
>
> "83. Determination of basic property tax, additional basic property tax, etc. by Municipal Council,- (1) The basic property tax, the additional basic property tax and the concession, if any, with regard to the age, for every building or land shall be determined by the municipal council subject to the minimum and maximum rates prescribed by the State Government under section 82.
>
> (2) The Municipal Council shall notify the rates determined under sub-section (1) and such other particulars in such manner as may be prescribed.
>
> (3) (i)(a) The basic property tax for every building shall relate to the carpet area of the building and its usage:
>
> Provided that the carpet area of any building shall not include the open verandah, open court-yard or any other open space which is not enclosed.

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(b) The classification of the building for the purpose of deciding the usage of any building shall be residential, commercial, industrial or any other classification as may be prescribed.

(ii)(a) The additional basic property tax for every building shall relate to location and type of construction of the building.

(b) For the purpose of this clause, the location of the building shall be classified as follows:-

(A) arterial roads, bus-route roads leading to arterial roads and main roads;

(B) bus-route roads other than those specified in item (A);

(C) roads and streets in primarily residential colonies.

(c) The type of construction of the building shall be classified into different groups as follows, namely:-

(A) thatched and tiled roof;

(B) reinforced concrete cement roof;

(C) reinforced concrete cement roof with mosaic flooring partly or fully;

(D) granite, ceramic tiles and marble flooring and walls partly or fully;

(iii) A concession on the basic property tax shall be allowed in calculating the property tax having regard to the age of the building, in such manner as may be prescribed."

The First Bench of this Court in Dindigul Anna District Tax Payers Sangam etc. v. Govt. of T.N. etc. & another reported in 1994 Writ Law Reporter 805, while considering a similar claim with regard to the manner in which the value of the building should be fixed, held that for the purpose of enhancement of property tax reasons should be given in the special notice.

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Paragraphs 22 and 23 of the said decision is extracted below:-

> "22. The next question we have to examine what are the other directions which should issue on the facts and circumstances of these cases and in the light of Rule 14(2) of the Rules. No doubt Rule 14(2) of Schedule IV of the Act says that in a case where a special notice is required to be served on the owner or occupier of the property under first proviso to Rule 9, the general revision shall be deemed to have taken effect on the 1st day of the half year following that in which such special notice is served on the owner or occupier of the property. The Executive Authorities of the Municipalities have served the special notices under Rule 9 enhancing the assessment on the owner or occupier, in these cases, long prior to 1.10.1993 stating that the assessments in respect of their properties have been increased with effect from the half year commencing from 1.10.1993. As we are setting aside the said special notices under Rule 9 on the technical ground that the reason for enhancement is not given therein, we are inclined to direct the Executive Authorities of Municipalities in question to issue fresh special notices containing the reasons for enhancement of the property tax, giving liberty to the owners or occupiers to apply for revision of the proposed enhancement. In these circumstances, we are also of the view that such special notices served on the owners or occupiers of the properties pursuant to our order in these writ petitions and the general revision can be very well be directed to take effect from 1.10.1993, because the Municipalities in question have as a matter of fact served special notices though without giving reasons under first proviso to Rule 9 long prior to 1.10.93. The mere fact that the special notices under Rule 9 served on the owners or occupiers of the properties are invalid as they did not contain reasons for enhancement of property tax and are quashed for the reasons stated above, does not preclude this Court from issuing directions to the executive authorities of Municipalities in question to issue fresh notices under Rule 9 to the assessees giving reasons for enhancement of property tax, for the half year commencing from 1.10.1993.
>
> 23. Accordingly we direct the executive authorities of Municipalities in question to issue fresh special notices under Rule 9 to the assessees giving reasons for the enhancement of the property tax, for the year commencing from 1.10.1993. On receipt of

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such notices, it is open to the members of the petitioners Sangams to file their objections or apply for revision of the proposed enhancement. As and when revisions are filed by the owners or occupiers of properties within the prescribed time, the Municipal Authorities shall consider the same and pass appropriate orders on merits. With the above directions, these writ petitions are allowed. However, there will be no order as to costs."

That reasons have to be given in a notice issued in terms of Rule 9/10 of Schedule IV to the Act is not in dispute.

5. The authorities after receiving the objections from the petitioner, passed the proceedings on 17.3.1999 merely confirming the demand without adverting to the various objections and contentions raised in the letter dated 12.3.1999. Neither the special notice dated Nil nor the impugned proceedings dated 17.3.1999 contain any reason. The basis on which the property tax was revised is not stated. Government guidelines have been referred to in the impugned proceedings, but how the amount was arrived at is not given. A mere reading of the impugned proceedings dated 17.3.1999, it is clear that it is a non-speaking order and without any reasons whatsoever. The only utterance in the impugned proceedings is that the contention of the petitioner has been rejected and the revision is based on Government guidelines.

6. No counter has been filed and there is no instructions to the Additional Government Pleader. The learned Additional Government Pleader appearing for the respondent submitted that though the notice does not contain the reasons, the authorities have passed the impugned proceedings considering the objections filed and the guidelines issued by the Government. He, however, fairly submitted that detailed reasons are not found in the impugned proceedings as to how the revision of the tax was made, particularly, with reference to Sections 82 and 83 of the Tamil Nadu District Municipalities Act. Learned Additional Government Pleader submitted that if the Court is inclined to interfere with the impugned proceedings, the same can be set aside with liberty to the authorities to proceed further in the matter in accordance with law. He prayed that the notice may be saved. He also submitted that the details, on the basis of which, the revision was made, will be given to the petitioner and they can give their objections which will be considered and appropriate orders will be passed in accordance with law by the authorities. He further submitted that the Rule 9/10 notice can remain as the petitioner's only grievance is that no reasons are found in the notice as well as the proceedings dated 17.3.1999.

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7. Having considered the contentions made by the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent Municipality and the decision of this Court referred to above and the provisions of the Act as extracted above, it is clear that the notice issued under Rules 9/10 of Schedule IV to the Tamil Nadu District Municipalities Act, which should contain reasons for revision of assessment of property tax, does not reflect any reason. The grievance of the petitioner is justified. As far as the impugned proceedings dated 17.3.1999 is concerned, it only refers to certain guidelines issued by the Government. The objections dated 12.3.1999 of the petitioner was referred to and rejected in a single line. The basis on which the revision of property tax was made is not reflected in the impugned proceedings. Merely by quoting the Government guideline, the authorities cannot shirk their responsibility to give reasons in the matter relating to assessment and revision of tax. The Act provides the basis on which the tax should be determined, in particular, Section 83 of the Act sets out the issues to be considered by the authority. Section 83(3)(i) to (iii) for the purpose of determining the property tax, interalia deals with carpet area, its exclusions; classification of building and its usage, like residential/commercial/industrial; location of the building, near arterial road, bus-route, etc.; type of construction, namely thatched roof, reinforced concrete, granited, ceramic tiles and such other relevant factors. Such being the requirement in law, the cryptic impugned proceedings cannot be accepted. The proceedings of the respondent clearly show that there is no application of mind to the objective standards prescribed under the Act for the purpose of determining the annual value and revision of property tax. The whole exercise, it appears, is nothing, but arbitrary.

8. It is well established principle in law that Administrative authority exercising judicial or quasi-judicial functions is required to record reasons for its decision. In S.N.Mukherjee - v. Union of India reported in AIR 1990 Supreme Court 1984, the Hon'ble Supreme Court held in paragraphs 35, 38 and 39 as follows:-

> "35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in

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the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

"38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act,

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1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

"39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

In the instant case the authority which passed the impugned proceedings dated 17.3.1999 is bound in law to consider the various factors as set out in Tamil Nadu District Municipalities Act and the Rules and that too for good and sufficient reasons and before taking a final decision (See 1994 W.L.R. 805 supra). The recording of reasons in the proceedings by the authority will eliminate the charge of arbitrariness and if reasons are given, the higher or appellate authority can consider the issue on merits (see A.I.R. 1990 Supreme Court 1984 supra). There is no reason in the notice issued under Rule 9/10 of Schedule IV to the Act or in the proceedings dated 17.3.1999 and therefore, the same is liable to be interfered with. The authority under the municipal law could have spent some more time before issuing the notice and the authority who passed the impugned proceedings could have given reasons though not a detailed or exhaustive one while concluding the issue. If this exercise had been done, the matter would not be pending before this Court for so many years. No counter has been filed in spite of the fact that the case is pending for such a long period. Nothing more needs to be said about the attitude of the respondent authority. The respondent's counsel submits that reasons will be given if an opportunity is given. Hence, there is no necessity to interfere with the two notices.

9. In the result, the impugned proceedings Rc.No.436/98 dated 17.3.1999 is set aside and the two notice are kept intact. On receipt of the order of this Court, the respondent shall give reasons in support of the notices issued under Rules 9/10 of Schedule IV to the Tamil Nadu District Municipalities Act within a period of four weeks. On such intimation, the petitioner is at liberty to give the objections for the same within 30 days of furnishing of the reasons by the authority concerned. The appropriate authority shall consider the objections if any and pass appropriate proceedings/orders on merits and in accordance with law expeditiously.

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10. It is made clear that any payment made pursuant to the order of this Court will be adjusted against the claim after a final decision is taken by the respondent authorities one way or the other in the matter of assessment. Both the writ petitions are ordered as above. There will be no order as to cost.

Kb/ts

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Executive Officer,
Veerakeralam Town Panchayat,
Coimbatore-641 007.

GM(CO)
dcp/26.2.07

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